



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/168920

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Child Care, a telephonic hearing was held on December 10, 2015, at Racine, Wisconsin.

The issue for determination is whether petitioner was overpaid in child care benefits (CCB).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Jelena Jones

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner received CCB from at least June 2012 through August 2012.
3. From June 2012 through August 2012, petitioner's earned income was not budgeted correctly when determining her eligibility for child care funds.

4. The petitioner was employed with [REDACTED] from at least January 2012 - December 2012. See Exhibit 2.
5. In March 2015 the agency became aware of the wage discrepancies used in petitioner's case through an alert from the State Wage Income Collection Agency (SWICA). Exhibit 2. It thereafter received verifications of petitioner's wages January 2012 - December 2012 from her employer. Exhibit 2.
6. By notices dated August 10 and 11, 2015 the agency informed petitioner that she was overpaid \$185.24 (claim # [REDACTED]) in child care because of client error in not reporting the earned income.

### DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires the agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. §49.195(3). The agencies must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover the overpayment. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual (WSCCA Manual)*, Ch. 2., available online at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_2/chapter2client.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_2/chapter2client.pdf).

The Wisconsin Shares child care program requires that participants report certain changes to the agency. One such change is "a change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL." *Child Care Manual*, §1.15.2 (Rev. 6/8/2012), available online at [http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter\\_1/chapter1pre1213.pdf](http://dcf.wisconsin.gov/childcare/wishares/pdf/chapter_1/chapter1pre1213.pdf).

In this case, the agency established the overpayment at issue because petitioner's income increased in June 2012 by at least \$250. She would have been required to report this by July 10, per policy, which requires that participants report any changes in circumstances that may affect eligibility to the child care administrative agency within 10 days of the change. *Id.* at §1.15.2.

Petitioner did not dispute the calculations, but rather, testified that she did not do this intentionally and thought she had been reporting her income correctly and timely. Intent is not relevant to this case. The agency was not trying to prove that she intentionally failed to report the increase in income and in the end, the benefits can be recovered regardless of fault. Thus, even if the agency had failed to budget income that she had reported correctly, the authorizing statute does not care who made the error. See Wis. Stat. §49.195(3).

I must uphold the agency's determination. While petitioner may find my decision unfair, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).

**CONCLUSIONS OF LAW**

The agency has established an overpayment of \$185.24 (claim # [REDACTED]) of child care funds against the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of January, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 6, 2016.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud